

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

IN RE:	)		
	)	Case No.	3:09-05808
5K UTILITY AND CONSTRUCTION, INC.	)	Chapter	11
	)	Judge	Lundin
DEBTOR	)		
_____	)		

**NATIONAL CITY’S EXPEDITED MOTION FOR  
WITNESS TO APPEAR BY TELEPHONE AT DECEMBER 15 HEARINGS**

Pursuant to Local Bankruptcy Rule 9075-1, National City Equipment Finance (“NCEF”), a secured creditor, and National City Bank (“NCB”), a secured creditor, by counsel, submit this Expedited Motion for their witness to appear telephonically at the hearings on December 15, 2009. As grounds for this expedited motion, NCEF and NCB (collectively, the “Lenders”) state as follows:

1. Having obtained consent from the Debtor, the Lenders seek a telephonic appearance of their witness, Guy Spalding, II, Vice President, Credit Policy at NCB, at the combined disclosure statement and confirmation hearing (the “Confirmation Hearing”) currently set for 9:00 a.m. on December 15, 2009 (the “Hearing Date”), as well as any additional motions that are scheduled for the Hearing Date, including without limitation the Lenders’ motion for dismissal and other relief (the “Lenders’ Motion to Dismiss”).

2. There is insufficient time for typical notice and hearing requirements on this motion. Because this is a small business case, the Debtor must conduct its confirmation hearing at the scheduled time (the Debtor filed its plan and Disclosure Statement on November 1, 2009, or 44 days prior to the Hearing Date).

3. Notice of this Motion is being sent via the Court’s CM/ECF system to all parties to this case signed up for CM/ECF.

4. In light of the Debtor's consent, no hearing on this motion is required. It does not appear that any other parties have reason to object to the relief requested.

5. The Lenders will have a notary present at the witness's location so that proper swearing in can take place. The Debtor and the Lenders have agreed that any exhibits will be made available in advance of the Hearing Date and distributed such that the witness will have such exhibits available for and during his telephonic testimony.

WHEREFORE, the Lenders seek an order permitting Mr. Spalding to appear telephonically at the Confirmation Hearing and any other hearings that are set for the Hearing Date.

RESPECTFULLY SUBMITTED:

s/ Robert J. Welhoelter

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*Co-Counsel to the Lenders*

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served through the Court's CM/ECF system on this the 25th day of November, 2009.

s/ Robert J. Welhoelter